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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date **24/02/2011**

Appeal No. E/169 /2005 - EX[DB]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

C.C.E. MEERUT II Appellant

Vs

M/S D.S.M.SUGAR, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 199/ 2011 **EX[DB]** dated 25-1-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S D.S.M.SUGAR,
KASHIPUR, DISTT.-U.S.NAGAR-244714

2. Adv. / Consult
MR. RAJESH KUMAR,ADV.,
24A, DDA SFS FLAT, MOUNT KAILASH,
EAST OF KAILASH, N. DELHI-110065.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 25/1/2011
Date of Decision: 25/1/2011

For approval and signature:

Hon'ble Shri Justice R.M. S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules. 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

Appeal No.E/169 of 2005-Excise Branch

(Arising out of Order-in-Appeal No.253-CE/MRT-II/2004 dated 13.10.2004 passed by the Commissioner of Central Excise (Appeals), Meerut-II).

CCE, Meerut-II
Appellants

Vs.

M/s.D.S.M. Sugar
Respondent

Appearance: Shri B.K. Singh, Jt. CDR for the appellants.
Shri Rajesh Kumar, Advocate for the respondent.

CORAM:**Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 199/2011-Ex /Dated:

Per Rakesh Kumar:

The respondent are manufacturers of sugar and molasses chargeable to central excise duty. In the RT-12 Returns for the April, 1998 filed by the respondents with the jurisdictional Range Office, they had shown a quantity of 27,309.69 quintals of molasses involving duty of Rs.13,65,483/- pertaining to the 1987-88 sugar season as having been drained out without payment of duty, as the molasses had become unfit for consumption. It is on this basis that show cause notice dated 3.11.98 was issued to the respondents demanding central excise duty and proposing imposition of penalty. The molasses drained out had been stored in the kachha pits and the pukka pits. The show cause notice was adjudicated by the Additional Commissioner, Central Excise, Meerut vide order-in-original dated 2.8.2000 by which the duty demand, as made in the show cause notice was confirmed under Rule 9(2) of Central Excise Rules, 1944 and besides this, penalty of Rs.5,000/- was also imposed on the respondent. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 3.10.2004 allowed the appeal on the ground that the entire quantity of the molasses, in question, which was of the sugar season 1987-88, had been stored in various kachha and Pucca tanks; that in respect of that molasses, starting from 1990, the respondent had been writing to the central excise department to permit its destruction, that the letters written have been listed in their reply to the show cause notice and had also been taken note of in the order-in-original; that when the department was not responding and the State Excise Authorities were pressing the Appellant to drain out the molasses, they drained out the same in presence of the State Excise Officers, that the fact that the destruction was done in the presence of the State Excise Authorities is not disputed and that the destruction had become imminent once the Alcohol Technologist has certified about deteriorated condition of the molasses. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the department.

2. Heard both the sides.

3. Shri B.K.Singh, Ld. Jt. CDR reiterating the grounds of appeal in the revenue's appeal pleaded that the respondent had been allowed to store the molasses in kachha pits subject to condition that the storage is at their own risk and they will not ask for remission of duty under Rule 49 of the Central Excise Rules, 1944, even in case of loss or deterioration due to natural causes or otherwise and that they shall pay the duty chargeable on the same, that the intimation regarding destruction was filed by the respondent vide their letter dated 7.4.98 which was received in the Range Office in the evening of 13.04.98 and subsequently it was found that the molasses had already been drained out during the period from 8.4.98 to 13.4.98 in the presence of the State Excise Authorities,

that as per the entries in the MF-5 register, the respondents during the period from 8.4.98 to 13.4.98 had drained out 26288.15 quintals of molasses while the molasses pertaining to the 1987-88 period was 27309.65 quintals and as such, it is clear that 1021.5 quintals of molasses had been removed without payment of duty, that this fact has been ignored by the Commissioner (Appeals), that the Commissioner has also ignored the fact that as per the terms and conditions subject to which the molasses had been allowed to be stored in kaccha pits, the respondents could not claim the remission of duty even if the condition of the molasses was deteriorated and in view of this, the respondent were liable to pay the duty in respect of the molasses, whose demand had been wrongly set aside by the Commissioner (Appeals).

4. Shri Rajesh Kumar, Advocate, ld. Counsel for the respondent defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the molasses, in question, was of 1987-88 sugar season, that the same had been stored for in kachha pits and in pucca pits, that during the period of dispute, no permission for storage of molasses in kachha pits within the factory was required; that since the molasses of 1987-88 period has been deteriorated and become unfit for consumption, the respondents, as early as in November, 1990, had sought the permission from the Central Excise Commissioner for its destruction, that in this regard a number of letters dated 25.11.87, 5./6.2.92, 14.3.92, 5.11.93, 21.3.95, 5.2.96, 13.5.96 and 4.10.96 had been

addressed to the department asking for the permission for draining out the deteriorated molasses, as the State Excise Authorities were pressing hard for its draining out for the reasons of environmental and pollution problems, that in view of the pressure from the State Excise Authorities and since there was absolutely no response from the Department, the respondent vide their letter dated 7.4.98 informed the jurisdictional Central Excise Authorities for draining out of the molasses on 13.04.98 and that subsequently, the molasses was drained out during the period from 8.4.98 to 13.4.98 in the presence of the State Excise Authorities and that it is not disputed that molasses had been deteriorate and the same had been drain out by the respondent in the presence of the State Excise Authorities and that in view of this, no duty is chargeable on the molasses. He, therefore, pleaded that there is no merit in the appeal of the Revenue.

5. We have carefully considered the submissions from both the sides and perused the records. The molasses, in question, was of 1987-88 and the same had been stored in four kachha pits and one pucca pit in the factory premises. For storage of molasses within the factory in kaccha pits, no permission was required. There is no dispute about the fact that since 1990, when the respondents found that its quality has deteriorated, they had taken up the matter for its destruction with the Central Excise Authorities. It is not disputed that from November, 1990 onwards, a number of letters and reminders had been written by the respondents to

the Commissioner for permitting the destruction of the molasses which has deteriorated and the State Excise Authorities were pressing them to drain out the same on the same was causing environmental and pollution problems. We find from the records, that there was absolutely no response from the department to the Respondent's letters seeking permission for destruction of the molasses. We find that ultimately on 7.4.98, the respondent informed the department that they are going to drain out the spoiled molasses in the presence of the State Excise Authorities which was done from 8.4.98 to 13.4.98. There is no dispute that the molasses was drained out in the presence of the State Excise Authorities and that the same had deteriorated and had become unfit for consumption. The 2nd Proviso to Rule 49 (1) of the Central Excise Rules, 1944 provides that proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such conditions as may be imposed by the Commissioner by order in writing. In such cases, once the Commissioner is satisfied that the excisable goods manufactured by a manufacturer and lying in ~~store~~ stock have become unfit for marketing or for consumption, their destruction is allowed under the supervision of central excise officers. In this case, the respondents had been writing to the department again and again for about 8 years for permitting destruction of the molasses which had become unfit for consumption and in respect of which they were being pressed by the State Excise Authorities for its destruction as it was causing pollution problems, but there was absolutely no response from the department. When there is no dispute that the molasses had become unfit for consumption and the same had been destroyed in presence of State Excise officers under rule 49 of the Central Excise Rules, 1944, the remission of duty in respect of such molasses has to be allowed and the same cannot be refused on the basis of some undertaking given by the respondent regarding not ~~clearing~~ claiming the remission. In view of the above discussions, we are of the view that the Commissioner (Appeals) has rightly set aside the order of the Addl. Commissioner.

6. Therefore, we do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

[operative part of the order pronounced in the open court on.25/11/2011.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.